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OFFICE OF PETITIONS

In re Application of	:	
Catherine Burgess	:	
Application No. 09/746,491	:	DECISION ON PETITION
Filed: December 20, 2000	:	
Attorney Docket No. 15966-621 (CURA-121)	:	

This is a decision on the petition under 37 CFR 1.137(b), filed on February 7, 2005, which is being treated as a petition under 37 CFR 1.181 (no fee), requesting withdrawal of the holding of abandonment in the above-identified application. The delay in responding is regretted.

This application was held abandoned for failure to timely respond to the Restriction Requirement mailed September 24, 2003. A Notice of Abandonment was mailed on June 25, 2004.

Petitioner states that a reply was timely sent to the Office with a one (1) month extension of time on November 24, 2003. In support, petitioner submitted a copy of the previously mailed correspondence, which contains Express Mail label number EV328187445US. It is noted that the postcard receipt references an amendment/response to RR (3 pages); a petition for extension of time (x2); check #1713 for \$55 and the same Express Mail number. It is also noted that USPS Track and Confirm search results show that Express Mail No. EV328187445US was accepted on November 24, 2003.

The Office considers the date the paper or fee is shown to have been deposited as "Express Mail" to be the "Date In" on the Express Mail label, MPEP 513. That is the date that verifies that the package was actually mailed. The evidence is convincing that the amendment/response to the Office action was deposited as "Express Mail" with the US Postal Service on November 24, 2003.

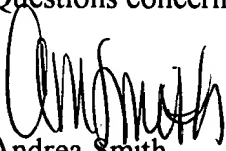
In view of the above, the petition is **GRANTED**. Accordingly, the holding of abandonment for failure to timely file a reply to the Restriction Requirement mailed September 24, 2003, is hereby withdrawn and the application is restored to pending status.

Since a petition under 37 CFR 1.181 requires no fee, the \$750 petition fee paid on February 7, 2005 is unnecessary. However, in order to consider the response filed on November 24, 2003 as timely, a one (1) month extension of time is necessary; therefore, \$750 less \$55 (= \$695) will be credited to petitioner's deposit account.

The revocation of power of attorney and grant of new power of attorney filed on February 7, 2005 has not been entered, because it appears to be signed on behalf of the assignee who failed to comply with the requirements of 37 CFR 3.73(b). However, in accordance with 37 CFR 1.34(a), the signature appearing on the petition shall constitute a representation to the United States Patent and Trademark Office that he/she is authorized to represent the particular party in whose behalf he/she acts. If petitioner desires to receive future correspondence, the appropriate power of attorney or authorization of agent must be submitted. A courtesy copy of this decision is being mailed to petitioner. Nevertheless, all future correspondence regarding this application file will be directed solely to the address of record until otherwise instructed.

This application file is being referred to Technology Center Art Unit 1646, for consideration of the amendment filed on November 24, 2003.

Telephone inquiries regarding this decision should be directed to Andrea Smith at (571) 27-3226. Questions concerning the processing of the application should be directed to the Technology Center.



Andrea Smith
Petitions Examiner
Office of Petitions

cc: Jenell Lawson
Intellectual Property
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